



सत्यमेव जयते



भारत का राजपत्र The Gazette of India

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं० 27]

नई दिल्ली, शनिवार, अक्टूबर 8, 1983/आश्विन 16, 1905

No. 27]

NEW DELHI, SATURDAY, OCTOBER 8, 1983/ASVINA 16, 1905

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii)

PART II—Section 3—Sub-section (iii)

(संघ राज्य क्षेत्र प्रशासनों को छोड़कर) केंद्रीय अधिकारियों द्वारा जारी किए गए आदेश और अधिसूचनाएं
Orders and Notifications issued by Central Authorities (other than Administrations of Union Territories)

भारत निर्वाचन आयोग

नई दिल्ली, 2 जून, 1983

आ.अ. 80 :—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, निर्वाचन आयोग सन् 1982 की निर्वाचन अधीन सं. 3 में दिए गए आन्ध्र प्रदेश उच्च न्यायालय, हैदराबाद के तारीख 10 दिसम्बर, 1982 के निर्णय को एतद्वारा प्रकाशित करता है :—

[सं. 82/आ.प./1982-83का(3)]

एम. एल. वाही, अवर सचिव,
भारत निर्वाचन आयोग

ELECTION COMMISSION OF INDIA

New Delhi, the 2nd June, 1983

O.N. 80.—In pursuance of section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election

Commission hereby publishes the judgment of the High Court of Judicature, Andhra Pradesh at Hyderabad dated 10th December, 1982 in Election Petition No. 3 of 1982.

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH, AT HYDERABAD

(Civil Original Jurisdiction)

Friday the 10th day of December

One thousand nine hundred and eighty two

PRESENT :

The Honourable Mr. Justice Ramachandra Raju.

ELECTION PETITION NO. 3 OF 1982

BETWEEN

T. K. Kodandaram

..Petitioner

AND

Savvasri :

1. P. Babulu Reddy, M.P.

2. R. Sambasiva Rao, M.P.

3. K. L. N. Prasad, M.P.

4. Y. Adinarayanareddy, M.P.

5. S. B. Ramesh Babu, M.P.

6. B. Ramachandra Rao, M.P.

7. M. M. Hashim, M.L.C.

8. The Returning Officer and Secretary to

Legislature, A.P. Hyderabad.

... Respondents

Petition UJss. 80 and 81 of the Representation of People Act, 1951 praying that in the circumstances stated in the affidavit and Memo of grounds filed therewith, the High Court will be pleased to declare the election of the respondents 1 to 6 herein to the Council of States as void, and award costs to the Petitioner and pass such further or other orders deemed fit and proper in this circumstances of the case.

The petition coming on for hearing, on Monday the 6th day of December, 1982, upon perusing the petition and the Memo of Grounds filed herein and the material papers in the case, and the counter affidavits filed herewith, and upon hearing the arguments of Mr. N. Chandra Mouli, Advocate for the Petitioner, of Mr. R. Dasaratharami Reddy, Advocate for the Respondent No. 1, Mr. M. Chandrasekhara Rao, Advocate for Respondent No. 2, Mr. V. R. Reddy, Advocate for Respondent No. 3, Mr. A. Reddappa Reddy, Advocate for Respondents Nos. 4 and 6, and of the Government Pleader for Transport on behalf of the Respondent No. 8, and the Respondent No. 5 not appearing in person or by Advocate, and Respondent No. 7 having been set *ex parte* and having stood over for consideration this day, the Court delivered the following : JUDGMENT :

This petition is filed under Sections 80 and 81 of the Representation of the People Act, 1951, to declare the election of respondents 1 to 6 to the Council of States as void and for costs. It arises on the following material facts.

18 seats were allotted to the State of Andhra Pradesh representatives of the State of Andhra Pradesh. 1/3rd of in the Council of States, such seats to be filled in by such seats shall retire as soon as may be on the expiration of every second year. The Secretary to the Legislature who is the Returning Officer accordingly issued the notification under Article 83 of the Constitution on 12-3-1982 inviting nominations and fixing 29-3-1982 as the date of election. The petitioner filed his nomination on 19-3-1982. Respondents 1 to 7 filed their nominations. There were a total of 13 nominations. The nomination filed by one Sri P. Rajan was rejected. Four other candidates, namely, Servasri Bolla Bulliramayya, N. Harshavardhan, B. Ramakrishna and Konda Lakshma Reddy withdrew their candidatures within the time notified for such withdrawals. The petitioner and respondents 1 to 7 alone contested the election. Respondents 1 and 2 were declared elected in the first count. Respondents 4 and 6 were declared elected in the second count. The 5th respondent was elected in the third count. The 3rd respondent was declared elected in the sixth count. The 7th respondent was declared not elected. The petitioner did not secure the prescribed number of votes and his deposit of Rs. 250 was forfeited. On the date of election and before the poll commenced, the petitioner made a written application before the Returning Officer requesting him for an adjournment of the poll on the following specific ground, namely, that "some of the Members of the Andhra Pradesh Legislative Assembly have been nominated by the Government of Andhra Pradesh as Chairman and Directors of the Government companies and corporations in the capital of which the Government of Andhra Pradesh hold not less than 25% shares. They have become disqualified for being Members of the Assembly under Art. 191(1)(e) of the Constitution of India read with Sec. 10 of the Representation of the People Act, 1951, read with Sec. 2(24) of the Companies Act, 1956. They are not entitled to vote under Sec. 62(2) of the Representation of the People Act, 1951. Their names may, therefore, be deleted as required under Sec. 16(2) of the Representation of the People Act, 1951".

The petitioner, in the election petition, besides reiterating that ground, has also set out the following additional grounds for setting aside the election of respondents 1 to 6. These Additional grounds are—(1) the 7 M.L.As. whose names were set out in the petition were nominated by the Government as Directors including Chairman of the Leather Industries Development Corporation of Andhra Pradesh Limited, Hyderabad, by G. O. Ms. No. 672, Industries and Commerce (RIP) Department, dated 25-10-1979; (2) the members of the Assembly whose names are set out in paragraph 4 of the petition got themselves elected to the Assembly from constituencies reserved for the Scheduled Tribes, under the Scheduled Castes and Scheduled Tribes lists (Modification) Order 1956 as well as under the Scheduled Castes and Scheduled Tribes Order (Amendment) Act of 1976 which are *ultra vires* Art 342 of the Constitution of India; (3) Respondents 1 to 6 restored to money, caste and regionalism for their election; (4) the Returning Officer permitted all the Assembly Members to participate in the voting without deleting the disqualified members and the election process is, therefore, vitiated. The 7th respondent remained *ex parte*. Respondents 1 to 6 and 8 have, in their counters, refuted the allegations. According to them the electoral roll was properly maintained and as there was no disqualification ordered by the Governor, the voters were entitled to vote. The election is not vitiated for any of the reasons set out in the petition. Even otherwise, the result of the election is not materially affected.

The following issues were framed on 29-10-1982 :

- (1) Whether the respondent No. 8 (Returning Officer), did not properly maintain the list of elected members as required by section 152 of the representation of the People Act ?
- (2) Whether the election held on 29-3-1982 on the basis of such a list, is void ?
- (3) Whether in any event the result of the election, whereat respondent Nos. 1 to 6 were declared to have been elected, is materially affected ?
- (4) To what reliefs ?

The parties were given adequate opportunity to produce their evidence. On 12-11-1982 both parties stated that they have no oral evidence. The petitioner's counsel stated that he would only file some documents and arguments were heard in the case on 6-12-1982. The learned counsel on either side represented that besides the documents already filed along with the petition, they have no further documentary evidence.

Issue Nos. 1 and 2.—These issues go together. The following material provisions of the Constitution become relevant. Art. 190(3) of the Constitution provides that if a member of a House of the Legislature of a State becomes subject to any of the disqualifications mentioned in Clause (1) of Art. 191, his seat shall thereupon become vacant. Art. 191 of the Constitution provides :—

"(1) A person shall be disqualified for being chosen as, and for being a member of the Legislative Assembly or Legislative Council of a State—(a) if he holds any office of profit under the Government of India or the Government of any State specified in the First Schedule, other than an office declared by the Legislature of the State by law not to disqualify its holder.

(c) if he is so disqualified by or under any law made by Parliament."

Art. 192 of the Constitution provides :

"(1) If any question arises as to whether a member of a House of the Legislature of a State has become subject to any of the disqualifications mentioned in Clause (1) of Art. 191 the question shall be referred for the decision of the Governor and his decision shall be final.

- (2) Before giving any decision on such question, the Governor shall obtain the opinion of the Election Commission and shall act according to such opinion".

The material relevant provisions of the Representation of the People Act, 1951, can now be notified. Sec. 10 of the Act provides :

"A person shall be disqualified if, and for so long as, he is a managing agent, manager or secretary of any company or corporation (other than a co-operative society) in the capital of which the appropriate Government has not less than twentyfive per cent, share".

Section 62(1) of the Act provides :

"No person who is not, and except as expressly provided by this Act, every person who is, for the time being entered in the electoral roll of any constituency shall be entitled to vote in that constituency."

Sec. 62(2) of the Act provides :

"No person shall vote at an election in any constituency if he is subject to any of the disqualifications referred to in section 16 of the Representation of the People Act, 1950".

Section 80 provides that no election shall be called in question except by an election petition presented in accordance with the provisions of this Part.

The grounds relied upon by the petitioner may now be examined. In paragraph 8 of the election petition, a vague allegation was made that respondents 1 to 6 resorted to money, caste and regionalism for their election. No particulars are given as by which of respondents 1 to 6 any money was paid to any voter. There are also no particulars which of respondents 1 to 6 made resort to which caste or which region. Such vague allegations do not constitute a proper pleading to merit an enquiry. Further, the petitioner has not gone into the box to substantiate any of the grounds set out in paragraph 8 of the petition. Reference is made to certain press reports allegedly made by Sri Bhavanam Venkataram, the then Chief Minister of Andhra Pradesh that there was some cross-voting which resulted in the defeat of the 7th respondent. The press reports were not themselves filed. Sri Bhavanam Venkataram was not examined to give evidence in proof of the contents of such alleged press reports. The issue of the whip of the Leader of the Party to the voters belonging to that party cannot be a corrupt practice amounting to any undue influence. This ground of attack, therefore, remains unsubstantiated.

It is stated in paragraph 4 of the petition that the seven voters mentioned therein got themselves elected from reserved constituencies. Their election cannot be permitted to be indirectly questioned when no election petition was filed questioning the election of these seven M.L.As. from Scheduled Tribes constituencies. Even here, the petitioner has not let in any evidence as to the communities to which the persons whose names were set out in paragraph 4 of the petition belonged and how they are got members belonging to the Scheduled Tribes. In the state of affairs, one can only proceed on the footing that these members who were duly elected from constituencies reserved for the Scheduled Tribes in fact belonged to the Scheduled Tribes. This ground of attack also remains unsubstantiated.

The seven voters whose names are set out in paragraph 2 of the petition were nominated as Directors, including Chairman of the Leather Industries Development Corporation of Andhra Pradesh Limited, Hyderabad. Under section 10 of the Representation of the People Act, the disqualification arises only if the voter is a managing agent, manager or secretary of any company or corporation (other than co-operative society) in the capital of which the appropriate Government has not less than twenty-five per cent share. The person who were so appointed as directors or the Chairman do not come within the definition of either Managing Agent, Manager or Secretary. Further, no evidence was adduced to show the capital of the company or corporation and the interest of the Government in such capital. In the absence of any evidence in that behalf, this ground alleged by the petitioner also remains unsubstantiated.

A vague allegation is made that about 100 members were nominated by the Government of Andhra Pradesh as Director, including Chairman of the Companies and Corporations. No particulars are given about the persons so nominated nor was any evidence let in to establish that the Government of Andhra Pradesh held not less than 25 per cent shares in the capital of such companies or corporation. The ground remains unsubstantiated.

It is submitted that on the date of election, the petitioner filed an objection before the Returning Officer on the ground that some of the voters have become disqualified because of their nominations as Chairman and Director of Government companies and corporation and the question of disqualification should have been referred by the Returning Officer to the Governor and the poll should have been adjourned by the Returning Officer. The Returning Officer has no jurisdiction to adjourn the poll as on the date of poll, all the persons whose names appear in the electoral roll were entitled to vote. By the date of poll, none of them have become disqualified for being members of the Assembly. The refusal on the part of the Returning Officer to adjourn the poll cannot, therefore, invalidate the election in the absence of any disqualification ordered by the Governor. I accordingly find Issue Nos. 1 and 2 against the petitioner.

Issue No. 3.—I find on this issue that the result of the election is not materially affected.

Issue No. 4.—In the result, the election petition is dismissed. Having regard to all the circumstances, I direct the parties to bear their respective costs. Government Pleader's fees—Rs. 150/-.

APPENDIX OF EVIDENCE

Witnesses examined for the Petitioner :—Nil.

Documents marked as Exhibits :—Nil.

Witnesses examined for the Respondents :—Nil.

M. V. R. K. MURTHY,
Additional Deputy Registrar.
By Order

M. L. WAHI,
Under Secretary to the
Election Commission of India.
P. J. SIVARAM.

Chief Electoral Officer and
Principal Secretary to Government.
[No. 82/AP(3) of 1982/83]
M. L. WAHI, Under Secy.

आदेश

नई दिल्ली, 7 मितम्बर, 1983

आ०अ० 81.—निर्वाचन आयोग का समाधान हो गया है कि निम्न सारणी के स्तम्भ 4 में विनिर्दिष्ट प्रत्येक निर्वाचन लड़ने वाला अभ्यर्थी जिसने सारणी के स्तम्भ 2 में विहित असम राज्य विधान सभा के लिए उसके नाम के सामने स्तम्भ 3 में विनिर्दिष्ट निर्वाचन क्षेत्र से हुए निर्वाचन में जैसा कि उक्त सारणी के स्तम्भ 5 में दर्शाया गया है, जैसा कि लोक प्रतिनिधित्व अधिनियम, 1951 तथा तद्धीन बनाए गए नियमों द्वारा अपेक्षित है, अपने निर्वाचन व्ययों का कोई भी लेखा दाखिल करने में असफल रहा है।

और उक्त अभ्यर्थियों ने उसे सख्त सूचना दिए जाने के बाद भी उक्त असफलता के लिए न तो कोई कारण दिया है और न ही कोई स्पष्टीकरण दिया है और निर्वाचन आयोग का उनके द्वारा दिए गए आवेदनों पर यदि कोई हो तो विचार करने के बाद, यह समाधान हो गया है कि उनके पास उक्त असफलता के लिए कोई उपयुक्त कारण या न्यायोचित्य नहीं है ;

अतः अब उक्त अधिनियम की धारा 10-क के अनुसरण में निर्वाचन आयोग घोषणा करता है कि निम्न सारणी के स्तम्भ 4 में विनिर्दिष्ट व्यक्ति समद के किसी सदन के या राज्य की विधान सभा या विधान परिषद के सदस्य चुने जाने या होने के लिए इस आदेश की तारीख से 3 वर्ष की कालावधि के लिए निर्वाह किया जाता है।

क्रम सं०	निर्वाचन के विवरण	सभा निर्वाचन-क्षेत्र की क्र० सं० तथा नाम	निर्वाचन लड़ने वाले अभ्यर्थी का नाम व पता	निराहता के विवरण
1	2	3	4	5
9.	असम विधान सभा के लिए साधारण निर्वाचन, 1983	117-लाहावल सभा निर्वाचन क्षेत्र	श्री कालिकवर अथवासीबाब पो० मोहनवाडी, जिला डिब्रुगढ़, असम,	लेखा दाखिल नहीं किया।
10.	—वही—	—वही—	श्री सुरेन ब्रेनगोट्टेन धेकेरीगांव पो० बैरागीमठ, जिला डिब्रुगढ़, असम,	—वही—
11.	—वही—	28-गोसाईगांव सभा निर्वाचन क्षेत्र	श्री जीरेन्द्र बासुमात्रे मु० नीलईमारा पो० हाराकुटा, जिला-गोलपाड़ा, असम,	—वही—
12.	—वही—	44-जनिया सभा निर्वाचन क्षेत्र	श्री इंदरीश अली हत्तिया, पो० घुपुबारी, जिला कामरूप, असम,	—वही—

[सं० 76/असम—वि० सं० /83 (9-12)]

आवेग से,

सी० एन० रोज, अवर सचिव

ORDER

New Delhi, the 7th September, 1983

O.N. 81.—Whereas the Election Commission is satisfied that each of the contesting candidates specified in column (4) of the Table below at the election to the Assam Legislative Assembly as specified in column (2) and held from the constituency specified in column (3) against his name has failed to lodge any account of his election expenses as shown in column (5) of the said Table as required by the Representation of the People Act, 1951 and the Rules made thereunder;

And, whereas, the said candidates have either not furnished any reason or explanation for the said failure even after due notice or the Election Commission, is satisfied that they have no good reason or justification for the said failure;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the persons specified in column (4) of the Table below to be disqualified for being chosen as, and for being a member of either House of the Parliament or of the Legislative Assembly or Legislative Council of a State for a period of 3 years from the date of this order.

TABLE

Sl. No.	Particulars of elections	Sl. No. and Name and Assembly Constituency	Name of the contesting candidates.	Reason for disqualification
1	2	3	4	5
10	General Election to Assam Legislative Assembly 1983	117—Lahowal Assembly Constituency	Shri Kanti Konwar, Athabari Gaon, P.O. Mohanbari, Distt. Dibrugarh, (Assam).	Account not lodged
11	-do-	-do-	Shri Suren Buragohain Dhekeni Gaon, P.O. Bairagimath, Distt. Dibrugarh, (Assam)	-do-
12	-do-	28—Gossaigaon Assembly Constituency	Shri Jirendra Basumatary, Vill. Nilajhara, P.O. Harafuta, Distt. Goalpara, (Assam).	-do-
13	-do-	44—Jania Assembly Constituency	Shri Indris Ali Haldhja, P.O. Ghupubari, Distt. Kamrup, (Assam)	-do-

[No. 76/AS-LA/83(9 --12)]

By Order,

C. L. ROSE, Under Secy.

नई दिल्ली 16 सितम्बर 1983

आ.अ. 82.—लोक प्रतिनिधित्व अधिनियम 1950 (1950 का 43) की धारा 13क की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए भारत निर्वाचन आयोग तमिलनाडु सरकार के परामर्श से श्री डी.के. ओझा आई.ए.एस. की छुट्टी की कालावधि के दौरान श्री देवराज, सरकार के उपसचिव, लोक (निर्वाचन) विभाग, को उनके कार्य-भार सम्भालने का भारीपत्र से अगले प्रदेशों तथा तमिलनाडु राज्य के मुख्य निर्वाचन अधिकारी के रूप में नामनिर्दिष्ट करता है।

श्री डी.के. ओझा भारतीय (1) अक्टूबर 1983 का अपना छुट्टी में शामिल आते पर पुनः तमिलनाडु राज्य के मुख्य निर्वाचन अधिकारी का कार्यभार सम्भाल लेंगे।

[सं. 154/ए.ए. नां/83]

आदेश से,

ब. गणेशन सचिव

New Delhi, the 16th September, 1983

ON 82—In exercise of the powers conferred by sub-section (1) of section 13A of the Representation of the People Act 1950 (43 of 1950), the Election Commission of India, in consultation with the Government of Tamil Nadu hereby nominates Shri G. Devaraj, Deputy Secretary to Government, Public (Elections) Department, as the Chief

801 GI/83—2.

Electoral Officer for the State of Tamil Nadu with effect from the date he takes over charge and until further order during the leave period of Shri D.K. Oza, IAS

Shri D.K. Oza, on return from his leave on 21 October, 1983, will take over again as the Chief Electoral Officer for the State of Tamil Nadu.

[No.154/TN/83]

By Order,

K. GANESAN Secy

नई दिल्ली, 13 सितम्बर, 1983

आ.अ. 83.—लोक प्रतिनिधित्व अधिनियम, 1950 की धारा 13-क की उप-धारा (1) में अन्तर्दृष्ट उपबन्धों के अन्वय में, तथा अपनी अधिसूचना सं. 508/केरल/81, तारीख 12 मार्च, 1981 को अधिकांश करते हुए, निर्वाचन आयोग केरल राज्य सरकार के परामर्श से उस राज्य के प्रत्येक जिले के जिला कलेक्टर को, उस जिले के लिए जिसका वह जिला कलेक्टर है, जिला निर्वाचन अधिकारी के रूप में एतद्वारा पदाभिहित करता है।

[सं. 508/केरल/83]

आदेश से,

एम. एल. वाही, अवर सचिव

New Delhi, the 13 September, 1983

O.N. 83.—In pursuance of the provisions contained in subsection (1) of section 13A.A of the Representation of the People Act, 1950, and in supersession of the Commissioner's Notification No. 508/KL/81, dated the 12 March, 1981, the Election Commission, in consultation with the State Govern-

ment, hereby designates the District Collector of each of the District in the State of Kerala as the District Election Officer of the District of which he is the District Collector.

[No. 508/KL/83]

By Order,

M. L. WAHL, Under Secy.